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Subject: Standard Rules and Procedures for Health Division Personnel.

Purpose: Establish standard rules and procedures by which Health Division personnel shall execute their duties under the law.

General Considerations: Boston Inspectional Services Department (ISD) personnel are charged with great responsibility and trust in ensuring the well being of the public health, welfare and safety. Consistent, clear and efficient operational protocols are essential to ensuring that Health Division personnel fairly and effectively administer the law. Health Division personnel must use these rules and sound professional judgment in performing all duties with the overriding themes of integrity and honesty.

Note: For the purpose of clarity and brevity, the pronouns "He" and "His" are used editorially throughout this rule and it should be interpreted as gender neutral. .

ARTICLE I. Public Integrity Policy

Section 1.0

It is the policy of ISD that every action of ISD as an organization, and as those of individuals, who act on its behalf, will reflect the highest standards of honesty and integrity. In all of our interactions, whether with the general public, or with each other, we will act in accordance with the ethical standards established by the City of Boston, ISD and this bulletin. It is the responsibility of ISD and its employees to prevent, detect and correct instances of misconduct, whether administrative or in violation of law or the public trust.

Section 1.1

It shall be the duty and responsibility of each Health Division employee to become familiar with, and to conduct themselves in accordance with, the Public Integrity Policy of ISD, as stated in Commissioner's Bulletin 2002-17, as well as Commissioner's Bulletin 1993-3.

ARTICLE II Health Division Operations

Section 1.0 Chain of Command

The Assistant Commissioner is in charge of the Health Division and shall report directly to the Deputy Commissioner of Field Services. He shall conduct his duties pursuant with City of Boston policies and Ordinances as well as those mandated in the Massachusetts General Laws. He is responsible for all aspects of the Health Division's operation, development of enforcement strategies and innovations. He shall be aware of issues that need to be addressed in the field or for the Department. He shall be responsible for the day to day activities of Principal Health Inspectors, Health and Environmental Sanitation Inspectors and clerical staff. In the event that the Assistant Commissioner is absent, the Deputy Commissioner of Field Services or his designee shall assume these duties. The Assistant Commissioner shall be responsible for all staff training, developing policy, the efficiency of enforcement, and the oversight of the Principal Health Inspectors day to day operations. Principal Health Inspectors shall report directly to the Assistant Commissioner. Principal Health Inspectors shall have executive responsibility for ensuring the procedures, protocols, policies and orders of the Assistant Commissioner and those of the Department are effectively and consistently followed in the day to day deployment and performance of Health Division personnel. Principal Health Inspectors shall ensure consistency in all matters of operation and procedures to make sure Health Division personnel are following the same policy. Environmental Sanitation Inspectors shall report directly to their assigned Principal Health Inspector or in his absence a Principal Health Inspector. All Health Division personnel, when responding to an emergency, shall report to the incident commander, Commissioner or Commissioner's designee.

Section 2.0

Staff Schedule

The regular workday of the Health Division for all staff is 8:00 AM to 4:00 PM, Monday through Friday. Principal Health Inspectors shall assign daily inspections and route assignments to all Environmental Sanitation Inspectors. All Environmental Sanitation Inspectors shall draft a proposed Daily Activity Report at the start of each workday, endorse it and submit it to their assigned Principal Health Inspector for his approval by endorsement. All Environmental Sanitation Inspectors shall accurately complete the Daily Activity Report at the end of the workday, endorse it and submit it to their Principal Health Inspector for his approval and endorsement. Environmental Sanitation Inspectors shall be assigned an inspection area by City ward and these wards shall be rotated every two years. Environmental Sanitation Inspectors are allowed a fifteen (15) minute rest period during each one-half (1/2) work day. The rest period shall be scheduled at the middle of each one-half (1/2) work day when feasible. Breaks shall not be taken immediately prior to or after the lunch period unless approved in advance by a manager.

Section 3.0

Use of Equipment

The Health Division shall adhere to Commissioner's Bulletin No. 2002-18 "Standard Rules and Procedures for Issue, Use and Care of ISD Equipment". Health Division personnel shall limit the use of equipment to times in which they are performing a task required by their professional duties. They shall be accountable for the proper use and care of ISD equipment. Health Division personnel shall be responsible for all assigned equipment and forms such as: calibrated metal stem thermometers, thermo-couples, alcohol wipes, flashlights, thermo-labels, hair restraints, test kits, specimen bags and cooler, inspection forms, codes and regulations, assigned jacket and cap, and any other assigned equipment.

Section 4.0

Inter-Division Issues/Referrals

All Health Division personnel shall understand their responsibility to report possible violations found in the field that may be under the jurisdiction of another ISD division and/or any other issue concerning the conduct of ISD personnel to their immediate supervisor for proper referral and/or action.

Section 5.0

Media Inquiries

It is the policy of ISD to refer all media inquiries to the Commissioner's Office or the Commissioner's media designee. The purpose of this policy is to ensure one informed response that encapsulates all the pertinent facts involved in an issue of media interest and also to limit the legal liability of unattended misstatements by those solicited.

Section 6.0

Safety

Health Division personnel shall consider safety precautions during all inspections and shall notify a supervisor if there are safety concerns regarding persons and/or equipment.

ARTICLE III Standard Rules of Practice and Procedure for Health Division Personnel

Section 1.0

Scheduling of Mandatory Inspections

Health Division mandatory inspections are assigned to inspectors by ward. Inspectors must work to balance hours required to inspect the total number of establishments within each assigned ward. Inspectors shall complete inspections required by State Sanitary Code 105 CMR 590.013 and other inspections according to dates stipulated on the monthly report form. If an inspector encompasses problems completing inspections on time, he shall notify a Principal Health Inspector seven (7) days before the deadline. Completions of the required initial inspections are reviewed and updated monthly by Principal Health Inspectors.

Food Establishments: 105 CMR 590.013 "Inspection and Correction of Violations" states that a regulatory authority shall inspect a food establishment at least once every six months. The regulatory authority may increase the interval between inspections beyond six months if the food establishments are assigned a less frequent inspection frequency based on a written risk-based inspection schedule that is being uniformly applied throughout the jurisdiction. The frequencies of inspections are risk based and require timely inspections. High risk establishments, which include highly susceptible populations such as hospitals, nursing homes, day care centers, elderly feeding programs, food processors, commissaries and non highly susceptible population establishments such as those who have multiple food preparation processes, deemed

compliance risks with three or more repeated risk factors or unsanitary conditions and those closed for sanitary violations must be inspected at least three times, medium risk establishments such as those with a limited menu of prepared unpackaged food, those where most products are prepared, cooked and served immediately, and those with hot and/or cold food holding of potentially hazardous food products for a single meal must be inspected at least two times, low risk establishments, such as those with pre-packaged foods only, limited preparation of non-potentially hazardous food products, and service of alcoholic beverages only must be inspected at least one time annually.

Recreational Camps for Children: 105 CMR 430:000 states that no recreational camp for children shall receive a license to operate in each year until it has been inspected by the local board of health and found by the board to meet all the requirements of 105 CMR 430:000. Recreational Camps for Children shall be inspected at least once annually.

Swimming Pools: 105 CMR 435:000 states that the board of health and the Department of Public Health or the authorized agent or representative of either are authorized to develop and adopt plans for the systematic, periodic inspection of swimming pools. Swimming pools shall be inspected at least once annually.

Massage and Bath: M.G.L. - Chapter 140, Section 51 - City of Boston Code, Ordinances, Chapter II, Section 2-12.5 states that a licensee shall permit authorized inspectors and agents of the Department to visit and inspect the establishment at reasonable times in order to ascertain whether it is in compliance with laws, including this regulation. Massage and Bath Establishments shall be inspected at least once annually.

Funeral Directors: M.G.L.- Chapter 114, Section 49 states that the board is authorized to employ inspectors who shall investigate and report to the board the results of their investigation. Funeral homes shall be inspected at least once annually.

Section 1.1 Complaint Intake

All complaints received by the Division of Health Inspections are deemed priorities and shall be responded to appropriately depending on the category of threat to public health and safety. Intake personnel will strive to obtain all the information necessary to properly respond to each individual complaint in a manner that will allow inspectors to understand and solve the complainant's issues. All complaints whether food service, massage, recreational camps for children, funeral homes, swimming pools and commercial will receive equal priority by intake personnel. Intake personnel shall log complaints and give complaints to a Principal Health Inspector who will refer to the appropriate inspector for investigation.

Section 1.2 Emergency Complaints

A complaint that is considered to be a possible imminent health hazard such as a food alert due to a possible foodborne illness, no water, sewage backup, no electricity, fire and/or smoke damage, which poses a significant threat or danger to health shall receive inspection priority and will be responded to within one to two days. A complaint that is not considered an imminent health hazard will be responded to within one to two days.

Section 1.3 Initial and Compliance Inspections - Purpose

The purpose of in initial inspection is to ensure that the establishment is in compliance with all relevant codes and is operating in a safe and sanitary manner. Should the initial inspection find violations that would create an imminent health hazard, an administrative action (refer to section 4.0) could occur. The purpose of a compliance inspection is to ensure that any violations cited in the initial inspection have been corrected. Should the compliance inspection reveal uncorrected violations a hearing (refer to Section 3.4) and/or other administrative action (refer to section 4.0) could occur.

Section 1.4 Establishment Participation During Inspections

Health Division personnel shall ask the person in charge to accompany them during the entire duration of the inspection. It is required that the person in charge demonstrate the proper knowledge necessary to operate an establishment in a safe and sanitary manner.

Section 2.0 Obtaining Legal Entry for Inspections

No prior notice of inspection is required so long as the regulatory authority presents official credentials and provides notice of the purpose and intent to conduct an inspection. The person in charge shall allow the regulatory authority entry to determine if the establishment is in compliance, allowing inspection, and providing information and records specified to which the regulatory authority is entitled according to law, during the establishments hours of operation and other reasonable times.

Section 2.1

Administrative Inspection Consent Forms - Right To Access

If denied access to an establishment for an authorized purpose, the regulatory authority shall inform the establishment that: the permit holder is required to allow access to the regulatory authority as specified under 105 CMR 400.100 and/or 105 CMR 590:012 and shall be in compliance with Commissioner's Bulletin 1999-05 "Administrative Inspection Consent Forms" and Commissioner's Bulletin 2000-02 "Right of Entry Policy". Access is a condition of the acceptance and retention of an establishment's permit to operate as specified under 105 CMR 400:100 and/or 105 CMR 590:012. If access is denied, an order by the appropriate authority allowing access, hereinafter referred to as an administrative warrant, may be obtained and make a final request for access.

Section 2.2

Foreign Language Interpretation

If, during the course of an inspection, Health Division personnel feel that an interpreter is necessary to properly ensure compliance and understanding of health issues, he shall notify his supervisor, who will make arrangements for the assistance of an interpreter.

Section 2.3

Warrants: Process

If denied access to a establishment for an authorized purpose and after complying with 105 CMR 400:100 and/or 105 CMR 590:012, the regulatory authority may issue, or apply for the issuance of, an administrative warrant in compliance with Commissioner's Bulletin 1999-06 "Effective Warrant Management" to gain access as provided in law.

Section 3.0

Conduct of Inspections

Health Division personnel shall present themselves in professional business attire at all times. The professional but personal approach is the tone that sets a positive balance for the inspection process. Health Division personnel shall establish a good rapport and show a genuine interest in the establishment, which shall be helpful in conveying the Health Division's goals of ensuring public health and safety.

Section 3.1

Presenting Identification

Health Division personnel will upon entering the establishment request to speak with the person in charge. Make proper introductions, present department issued identification and state the intent of the visit.

Section 3.2

Inspections - Standards, Scope, Completeness

At the time of the initial inspection, under 105 CMR 590:000, the inspector will inform the owner or person in charge (PIC), in writing of the existence of any violations. The inspection form serves as an order of correction. Correction of non-critical violations shall be corrected by an agreed to or specified compliance date, routinely within a one to two-week period. A Foodborne Illness Risk Factor Critical Violation means improper practices or procedures, which have been identified by the Center for Disease Control and Prevention (CDC), through epidemiological data as the most prevalent contributing factors of foodborne illness or injury. A Critical Violation is a violation that, if in noncompliance, is more likely than other violations to contribute to food contamination, illness, or environmental health hazards. A Non-Critical Violation does not seriously affect the public health. If the inspector finds only minor violations that do not affect the safe operation of the establishment, he may elect to file these violations and there will not be a scheduled compliance inspection. Minor violations must be corrected prior to the next initial inspection. Requests for extensions beyond the specified or agreed date require documentation to be attached to the original inspection forms and approved by the supervisor. If an imminent health hazard exists, the inspector contacts a supervisor to review possible closure procedures (refer to section 4.0). Inspectors will follow Health Division Temporary Suspension of Permit (TSOP) procedures under 105 CMR 590:000. Operators must be notified of their right to submit a request for a hearing at the time of the action. At the time of the compliance inspection, the inspector will ensure that all critical violations have been corrected. If the compliance inspection reveals only minor violations that do not affect the proper sanitary operation of the establishment, the inspector may elect to file these violations for review at the next sanitary inspection. If the compliance inspection reveals a failure to correct critical violations, if new critical violations are noted or if an accumulation of violations resulting

in unsanitary conditions exists, an administrative hearing (refer to section 3.4) may be scheduled within seven to fourteen calendar days. A pre-hearing inspection will be made before the scheduled hearing, usually the same day. If all violations are corrected, the owner will be in compliance, the hearing cancelled, and no further action will be taken. If all violations are not corrected, the owner/operator must appear at the hearing as scheduled. Principal Health Inspectors will ensure that all inspection procedures and protocols are in compliance under 105 CMR 590:000 and/or 105 CMR 400:000.

Section 3.2a HACCP Inspections

The Hazard Analysis Critical Control Point (HACCP) approach inspection process under 105 CMR 590:000 examines an operation as a total process by identifying "risk factors / critical control points" (Cooking, Cooling, Hot and Cold Holding, and Reheating) in an attempt to prevent food safety hazards from occurring (i.e., conditions at the establishment, which could lead to foodborne illness).

Section 3.2b Pre-Operational Procedures

All plan review, pre-operational, and remodeling requests must be scheduled with a Principal Health Inspector who specializes in those functions. Area inspectors will conduct pre-operational initial inspections provided the proper Certificate of Occupancy /Inspection has been filed, criteria for Certified Manager if applicable, as well as the permit application. This inspection will ensure that all areas of the establishment are in compliance with the relevant codes and/or ordinances prior to the inspector's approval for opening. This inspection is required after the completion of all construction and before opening to the public. Inspectors will conduct follow-up and other compliance inspections as required.

Section 3.3 Violations - Process, Notice, Follow-up, Referral to Legal, Closing Of

The inspection process under 105 CMR 590:000 and/or 105 CMR 400 is not complete until all violations have been corrected and/or filed. Minor non-critical violations that do not endanger the public health may be filed/closed out, but will be addressed during the next inspection. Any violation cited by the Division of Health Inspections such as Nuisance Notices, M.G.L. Chapter 111, Sections 122,123 and 125 and properly served by person, by constable, by certified mail or posting under 105 CMR 400:400 that is not corrected shall be referred to the Legal Division of Boston Inspectional Services for prosecution.

Section 3.4 Hearings

The Health Division shall adhere to Commissioner's Bulletin No. 2002a "Standard Rules of Practice and Procedures for Inspectional Services Department Hearings" and Commissioner's Bulletin No. 2002-02 "Designation of Inspectional Services Department Hearing Officer(s)".

At the Administrative Hearing, an individual owner or partner must appear at the hearing or be represented by a responsible person with written authorization signed by the owner or the partner. A corporation must be represented by an officer or by a responsible person with written authorization to represent the corporation, signed by an officer. The person appearing at the hearing may be accompanied by legal counsel or by an interpreter if English is not spoken. A request may be made that the hearing not be public. The owner will be afforded the opportunity to show cause as to why the establishment should not be closed and/or publicized. The Hearing Officer will preside over the hearing to address uncorrected violations. The inspector who cited the violations shall complete all administrative hearing forms. During the hearing, the inspector clearly conveys the compliance status of the establishment, The public health reasons for citing the violations and possible preventative actions. Acceptable alternatives and time frames for compliance are established during this hearing.. The person in charge of the establishment at the time of the inspection should be the establishment representative at the hearing. The Hearing Officer may establish a date for final inspection of the establishment or order the establishment's permit to operate suspended. Final inspections will be scheduled at the discretion of the hearing officer. Failure to appear at the hearing shall be reason for immediate action by the Division of Health Inspections. The owner will be served with a notice of hearing decision by certified mail.

If a Final Inspection reveals uncorrected critical violations or an accumulation of violations resulting in unsanitary conditions, the permit to operate will be immediately suspended, the establishment will be required to close, and the public will be notified of these actions by the Health Division.

Nothing in this policy shall preclude the Health Division from immediate closure of any establishment presenting an imminent danger to the public health as defined by 105 CMR 590:00 and /or any other required Codes and Ordinances.

Section 4.0 Revoking or suspending permits, activity or occupancy of premises.

In accordance with M.G.L. 111, § 30, the board of health or its authorized agent, as determined by the board of health, may, without a prior hearing, suspend a permit to operate when an imminent health hazard is found to exist and/or as the result of an administrative hearing decision. Permits to operate may be revoked if an establishment has shown, by its continuous failure to correct violations cited by the Health Division that its continued operation would pose a serious health threat to the safety of the public. A permit may be summarily suspended (M.G.L. 111, § 30), without prior notice, notice of a hearing, or a hearing, provided that the right to a hearing is afforded within three business days of the request. The permit holder shall file a written request for a hearing within ten days of receipt of the summary suspension order.

Section 4.1 Standards and Process for making determination - embargoes, civil disposition, recommendations for prosecution.

The Health Division shall take such steps as necessary, pursuant to M.G.L. c. 94, §§ 146 or 189A, to affect the condemnation and disposal of any food product found to be unfit for human consumption. The Health Division will ensure that all embargo procedures are in compliance with Commissioner's Bulletin 2002-15 regarding "Standard Rules and Procedures for the Embargo and Handling of Property".

Section 4.2 Duration

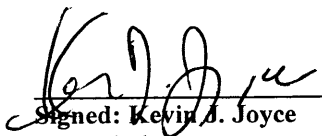
All administrative actions under 105 CMR 590:000 and/or 105 CMR 400:000 shall remain in affect until all violations have been corrected and/or have complied with the written decision of the Hearing Officer.

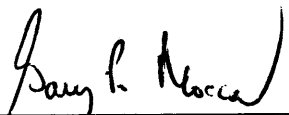
Section 4.3 Rights of the Aggrieved


The person appearing at any administrative action may be accompanied by legal counsel or by an interpreter if English is not spoken. Any person aggrieved by the final decision of a board of health may seek relief in a court of competent jurisdiction in the Commonwealth.

Section 4.4 Lifting the Action Taken

All administrative actions taken by the Division of Health Inspections shall remain in effect until the conditions cited in the order are corrected and their correction is confirmed by the Division of Health Inspections through reinspection and other means as appropriate.


Signed: Kevin D. Joyce
Commissioner
Date: 10.17.02


Gary P. Moccia
Assistant Commissioner
Date: 10/18/02


Thomas Goodfellow
Assistant Commissioner
of Health Division
Date: